UNITED
NATIONS

AT

Administrative Tribunal

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ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 552

Case No. 606: SZENTTORNYAY

Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Jerome Ackerman, President; Mr. Luis de Posadas Montero, Vice-President; Mr. Ioan Voicu;

Whereas, on 21 May 1991, Jebon Szenttornyay, a former staff member of the United Nations Conference on Trade and Development, hereinafter referred to as UNCTAD, filed an application which did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 20 June 1991, the Applicant, after making the necessary corrections, again filed an application containing the following pleas:

"II. The Pleas

1. The Applicant requests the Tribunal to find:

(i) that her appeal against the decision concerning classification of post EG-7-005115 which she encumbered from 1 April 1972 to 9 May 1989, is not time-barred and is therefore receivable;

(ii) that as a consequence, the Respondent should fulfil his assurance, contained in his letter of 24 April 1991, to agree that the Tribunal consider the merits of her appeal."

Whereas the Respondent filed his answer on 12 September 1991;

Whereas the Applicant filed written observations on 10 October 1991;

Whereas, on 4 June 1992, the Tribunal put a question to the Respondent and he provided an answer thereto on 9 June 1992;

Whereas the facts in the case are as follows:

The Applicant entered the service of the United Nations on 18 July 1960. She was initially offered a three-month short-term appointment at the G-3, step I level as a Clerk/Stenographer. On 18 October 1960, she was granted a probationary appointment and on 1 July 1962, a permanent appointment. On 16 January 1963, the Applicant was transferred to the International Trade Relations Branch of the Department of General Economic Research and Policies and on 1 May 1966, she was promoted to the G-4 level as Secretary. On 1 January 1971, the Applicant was reassigned to the Office of the Secretary-General of UNCTAD. On 1 April 1972, the Applicant was promoted to the G-5 level and her functional title was changed to Professional Assistant.

In July 1982, the International Civil Service Commission approved the establishment of a seven-level grading structure (to replace the existing five-level structure) for the General Service category in New York and promulgated job classification standards for the seven levels. Accordingly, all General Service posts in New York were classified under procedures set forth in administrative instructions ST/AI/301 of 10 March 1983 and ST/AI/301/Add.1 of 12 July 1983.

In accordance with the administrative instructions, on 16 January 1984, the Applicant, whose functional title at the time was Reference Assistant, and her supervisor, prepared a job description of the post she encumbered for initial classification. The Classification Review Group classified the post at the G-5 level in the Library Related occupation.

In a letter dated 9 June 1986, addressed to the Assistant Secretary-General for Personnel Services, the Applicant appealed the initial classification of the post, arguing that it should be classified at the G-7 level, essentially on the grounds that the functions of the post were not properly described. The New York General Service Classification Appeals and Review Committee (NYGSCARC) reviewed the case and recommended that the post be classified at the G-5 level. The Assistant Secretary-General for Personnel Services informed the Applicant of this decision on 10 February 1987.

In a memorandum dated 27 February 1987, addressed to the Assistant Secretary-General for Personnel Services, the Applicant appealed the classification decision by NYSGCARC and submitted a new job description signed by the Chief of the UNCTAD New York Office and approved by the UNCTAD Administration in Geneva. Having received no reply, on 12 May 1987, the Applicant inquired as to the status of her appeal. On 16 June 1987, the Chief, Administrative Review Unit, informed the Applicant that the Classification Section of the Office of Personnel Services was conducting "a review of all [staff], like [herself], who [had] requested a review of classification decisions based on the recommendations of the New York General Service Classification Appeals and Review Committee." After this review, the cases would be submitted to NYGSCARC "for further consideration". The Chief, Administrative Review Unit, noted that: "In an exercise as technical as classification of posts ... it would be advisable to explore all possible administrative remedies before having recourse to judicial bodies." She concluded: "Should you, after this review and consideration, still wish to pursue an appeal, the Respondent will not raise any question of time-limits, and your right of appeal will be preserved."

On 30 September 1988, the Officer-in-Charge of the UNCTAD New York Office wrote to the Chief, Compensation and Classification Service, Office of Human Resources Management* (OHRM), asking that the Applicant's functional title be changed to "Documentation and Information Assistant" and informing him that on account of the "recent restructuring of the New York Office of UNCTAD", the Applicant would assume "additional responsibilities". He emphasized that the Applicant's post should be classified at the G-7 level. In a reply dated 20 October 1988, the Chief, Compensation and Classification Service, OHRM, informed the Officer-in-Charge of the UNCTAD New York Office that the Classification Service would transmit to NYGSCARC their views on each case after conducting "a thorough analysis for each Tribunal appeal case, including the use of the appropriate functional title."

On 16 May 1989, the Applicant's case was resubmitted to NYGSCARC after review and analysis by the Compensation and Classification Service, OHRM.

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* Successor of the Office of Personnel Services

NYGSCARC reviewed the Applicant's case at its meeting held on 15 March 1990. According to the minutes of the meeting:

> "The Committee noted that the title of 'Information and Documentation Assistant' proposed by the appellant was not an official title and as such, could not be assigned to the post. Accordingly, the Committee recommends that the post be maintained at the GS-5 level in the Library Related occupation."

On 17 May 1990, the Chief, UNCTAD New York Office, conveyed to the Assistant Secretary-General, OHRM, the UNCTAD Administration's "full support ... to the appeal of [the Applicant]" and informed him that UNCTAD was "committed to find the way on how to implement the final decision on the appeal."

The Assistant Secretary-General, OHRM, approved NYGSCARC's recommendation on 4 June 1990. On the same date, and in two separate communications, he informed the Applicant and the Officer-in-Charge of the UNCTAD New York Office of his decision. In addition, on 8 June 1990, the Assistant Secretary-General, OHRM, wrote to the Chief of the UNCTAD New York Office, explaining the grounds for his decision.

On 10 August 1990, the Director, Programme Support and Management Services, wrote to the Assistant Secretary-General, OHRM, to convey UNCTAD's "position that the [Applicant's] functions merit a significantly higher grading than the G-5 level." He expressed the hope that OHRM would "find it possible to review the matter and to come to a mutually acceptable solution outside the formal recourse channels." In a reply dated 5 February 1991, the Assistant Secretary-General, OHRM, informed the Director, Programme Support and Management Services, that: "As the case has already been reviewed by the New York General Service Classification Appeals and Review Committee and a decision taken, it is not possible to revert to them." He suggested that UNCTAD "review the situation further to determine whether a suitable higher level post could be identified to which [the Applicant] might be transferred."

On 1 March 1991, the Applicant sought the Secretary-General's agreement for submission of her appeal directly to the Tribunal. In a reply dated 24 April 1991, the Assistant Secretary-General, OHRM, advised the Applicant that:

"...

The Secretary-General considers that your request to appeal the classification decision is time-barred and is thus not receivable.

You may appeal this ruling on receivability directly to the Tribunal and, if the Tribunal considers that your claim is not time-barred, Respondent would agree that the Tribunal could then consider the merits of your appeal against the decision concerning classification of post No. EG-7-005115 which you encumbered."

On 20 June 1991, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. Specific intervening actions taken by the Applicant and by her superiors between 4 June 1990 and 5 February 1991 suspended the time-limits for recourse to the Administrative Tribunal.

2. The 90 day time-limit specified in article 7(4) of the Statute of the Administrative Tribunal commenced to run on 5 February 1991 and not on 4 June 1990.

3. The Respondent, in his communication of 5 February 1991, did not claim that the Applicant was time-barred and implicitly acknowledged the merit of the Applicant's request to submit her case directly to the Tribunal.

Whereas the Respondent's principal contentions are:

1. The application is not receivable as it is time-barred.

2. The classification of the Applicant's post at the G-5 level was a proper exercise of administrative discretion and did not violate the Applicant's due process rights.

The Tribunal, having deliberated from 11 to 19 June 1992, now pronounces the following judgement:

I. The only point at issue in the present case is whether the Applicant's appeal against the classification of her post is receivable or is time-barred under article 7.4 of the Tribunal's Statute. The Respondent has agreed that the application may be referred directly to the Tribunal.

II. The Respondent contends that the period of 90 days within which the application is receivable under article 7.4, must be reckoned from 4 June 1990, on which date the recommendations of NYGSCARC (which were unfavourable to the Applicant) were communicated to the Applicant by the Assistant Secretary-General for Human Resources Management, who indicated that he approved them.

III. The Applicant, on the other hand, contends that the 90 days begin to run on 5 February 1991, when the Assistant Secretary-General for Human Resources Management reiterated (the word is that of the Applicant's counsel) his acceptance of NYGSCARC's recommendations.

IV. The Tribunal's view is that the 90 days must be reckoned from 4 June 1990 and not from 5 February 1991. Moreover, the reiteration of 5 February 1991 was not addressed to the Applicant, but to the Director, Programme Support and Management Services, UNCTAD, Geneva.

V. From the foregoing it would appear prima facie that the application is not receivable. However, the Tribunal must take account of the letter of 16 June 1987, from the Chief, Administrative Review Unit, written in response to the Applicant's request for review of the classification decision affecting her post. The letter included the following:

> "... In an exercise as technical as classification of posts ... it would be advisable to explore all possible administrative remedies before having recourse to judicial bodies. As you may be aware a review is at present in progress... Should you, after this review and consideration, still wish to pursue an appeal, the Respondent will not raise any question of time-limits and your right of appeal will be preserved. (Emphasis added)

The Applicant acted in accordance with the letter of 16 June 1987 and abstained from recourse to a judicial body until after the administrative remedies had proved unsuccessful.

VI. Having failed to obtain an administrative remedy, the Applicant applied to the Tribunal. Despite the above quoted letter, the Respondent asserts before the Tribunal that the application is time-barred under article 7.4. In

response to a question put by the Tribunal concerning this letter, the Respondent provided an explanation of what was intended by the letter which the Tribunal does not share. What is more important, the meaning now sought to be attached to the letter by the Respondent was not made clear in the letter itself.

VII. The Tribunal has reached the conclusion that it would be a breach of faith for the assurance given in the letter of 16 June 1987, to be swept aside and for the Respondent to rely upon the time-bar. In consequence, the Tribunal holds that the Respondent is estopped from asserting the time-bar by the Applicant's reasonable reliance on his assurance. In any event, in the circumstances, the Tribunal exercises its power under article 7.5 of its Statute, to suspend the provisions regarding time-limits in this case.

VIII. For the foregoing reasons, the Tribunal declares the application receivable, and retains jurisdiction of the application for consideration of the merits following submissions by the parties with respect thereto.

(Signatures)

Jerome ACKERMAN
President

Luis de Posadas Montero
Vice-President

Ioan VOICU
Member

Geneva, 19 June 1992

R. Maria VICIEN-MILBURN
Executive Secretary